

CHAPTER 1

INTRODUCTION TO FISCAL LAW

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CHAPTER 1

INTRODUCTION TO FISCAL LAW

I. INTRODUCTION.

A. The Appropriations Process.

1. U.S. Constitution, Art. I, § 8, grants Congress the power to “. . . lay and collect Taxes, Duties, Imports, and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States”
2. U.S. Constitution, Art. I, § 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of an Appropriation made by Law.”

B. The Supreme Court’s Fiscal Philosophy: “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” United States v. MacCollom, 426 U.S. 317 (1976).

C. Historical Perspective.

1. For many years after the adoption of the Constitution, executive departments exerted little fiscal control over the monies appropriated to them. During these years, departments commonly:
 - a. Obligated funds in advance of appropriations;
 - b. Commingled funds and used funds for purposes other than those for which they were appropriated; and
 - c. Obligated or expended funds early in the fiscal year and then sought deficiency appropriations to continue operations.

2. Congress passed the Antideficiency Act (ADA) to curb the fiscal abuses that frequently created “coercive deficiencies” that required supplemental appropriations. The Act consists of several statutes that mandate administrative and criminal sanctions for the unlawful use of appropriated funds. See 31 U.S.C. §§ 1341, 1342, 1350, 1351, and 1511-1519.

II. KEY TERMINOLOGY.

- A. Fiscal Year. The Federal Government’s fiscal year begins on 1 October and ends on 30 September.
- B. Period of Availability. Most appropriations are available for obligation for a limited period of time, *e.g.*, one fiscal year for operation and maintenance appropriations. If activities do not obligate the funds during the period of availability, the funds expire and are generally unavailable for obligation thereafter. DOD Financial Management Regulation 7000.14, Vol. 1, p. xix [hereinafter DoD FMR].
- C. Obligation. An obligation is any act that legally binds the government to make payment. Obligations represent the amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period. DOD FMR, Vol. 1, p. xxi.
- D. Budget Authority.
 1. Congress finances federal programs and activities by granting budget authority. Budget authority is also called obligational authority.
 2. Budget authority means “the authority provided by Federal law to incur financial obligations . . .” 2 U.S.C. § 622(2).
 - a. Examples of “budget authority” include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections. OMB Cir. A-11, Preparation, Submission and Execution of the Budget (June 2002), § 20.4 [hereinafter OMB Cir. A-11], available at <http://www.whitehouse.gov/omb/circulars/a11/02toc.html>.

- b. “Contract Authority,” as noted above, is a limited form of “budget authority.” Contract authority permits agencies to obligate funds in advance of appropriations but not to pay or disburse those funds absent some additional appropriations authority. See, e.g., 41 U.S.C. § 11 (Feed and Forage Act).
 3. Agencies do not receive cash from appropriated funds to pay for services or supplies. Instead they receive the authority to obligate a specified amount.
- E. Authorization Act. DFAS-IN Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000), ch. 3, para. 0304 [hereinafter DFAS-IN 37-1], available at <https://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/index.htm>.
 1. An authorization act is a statute, passed annually by Congress, which authorizes the appropriation of funds for programs and activities.
 2. An authorization act does not provide budget authority. That authority stems from the appropriations act.
 3. Authorization acts frequently contain restrictions or limitations on the obligation of appropriated funds.
- F. Appropriations Act.
 1. An appropriations act is the most common form of budget authority.
 2. An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” The Army receives the bulk of its funds from two annual appropriations acts: (1) the Department of Defense Appropriations Act; and (2) the Military Construction Appropriations Act. DFAS-IN Reg. 37-1, ch. 3, para. 030701.
 3. The making of an appropriation must be stated expressly. An appropriation may not be inferred or made by implication. Principles of Fed. Appropriations Law, Vol. I, p. 2-13, GAO/OGC 91-5 (1991).

G. Comptroller General and Government Accountability Office (GAO).

1. The Comptroller General of the United States heads the GAO, an investigative arm of Congress charged with examining all matters relating to the receipt and disbursement of public funds. Until 6 July 2004, “GAO” stood for General Accounting Office.
2. Established by the Budget and Accounting Act of 1921 (31 U.S.C. § 702) to audit government agencies.
3. Issues opinions and reports to federal agencies concerning the obligation and expenditure of appropriated funds.

III. ADMINISTRATIVE CONTROL OF APPROPRIATIONS.

A. Methods of Subdividing Funds.

1. Formal subdivisions: Appropriations are subdivided by the executive branch departments and agencies.
 - a. These formal limits are referred to as apportionments, allocations, and allotments.
 - b. Exceeding a formal subdivision of funds violates the ADA. 31 U.S.C. § 1517(a)(2). See DFAS-IN Reg. 37-1, ch. 3, para. 031403.
2. Informal subdivisions: Agencies may subdivide funds at lower levels, *e.g.*, within an installation, without creating an absolute limitation on obligational authority. These subdivisions are considered funding targets. These limits are **not** formal subdivisions of funds.
 - a. Targets are referred to as “allowances.”
 - b. Incurring obligations in excess of an allowance is not necessarily an ADA violation. If a formal subdivision is breached, however, an ADA violation may occur, and the person responsible for

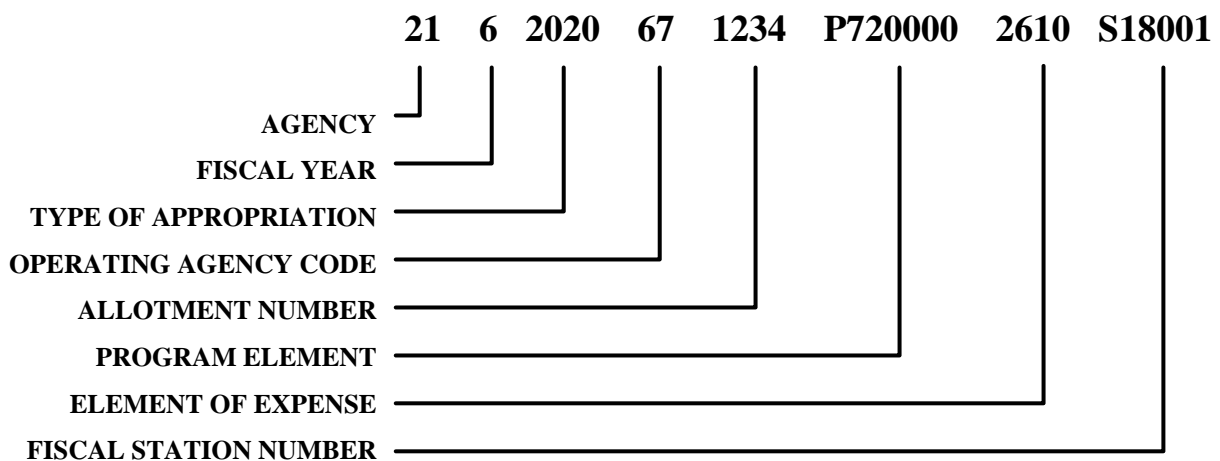
exceeding the target may be held liable for the violation. DFAS-IN Reg. 37-1, ch. 3, para. 031402. For this reason, Army policy requires reporting such overobligations. DFAS-IN Reg. 37-1, ch. 4, para. 040204.L.

B. Accounting Classifications. See DFAS-IN Reg. 37-100-XX, The Army Mgmt. Structure.

1. Accounting classifications are codes used to manage appropriations. They are used to implement the administrative fund control system and to help ensure funds are used correctly.
2. An accounting classification is commonly referred to as a **fund cite**. DFAS-IN Reg. 37-100-XX, The Army Mgmt. Structure, provides a detailed breakdown of Army accounting classifications. The XX, in DFAS-IN Reg. 37-100-XX, stands for the last two digits of the fiscal year, *e.g.*, DFAS-IN Reg. 37-100-02 is the source for accounting classification data for FY 2002 for the Department of the Army. DFAS-IN 37-100-XX is published annually. Go to <https://dfas4dod.dfas.mil/library/>.

C. Understanding an Accounting Classification.

1. The following is a sample fund cite:



- a. The first two digits represent the military department. The “**21**” in the example shown denotes the Department of the Army.
- b. Other Department codes are:
 - (1) 17 - Navy
 - (2) 57 - Air Force
 - (3) 97 - Department of Defense
- c. The third digit shows the Fiscal Year/Availability of the appropriation. The “5” in the example shown indicates Fiscal Year (FY) 2005 funds.
 - (1) Annual appropriations are used frequently in installation contracting.
 - (2) Other fiscal year designators encountered in installation contracting, less frequently, include:
 - (a) Third Digit = X = No Year appropriation, which is available for obligation indefinitely.
 - (b) Third Digit = 8/2 = Multi-Year appropriation, in this example, funds appropriated in FY 1998 and available for obligation until FY 2002.
- d. The next four digits reveal the type of the appropriation. The following designators are used within DOD fund citations:

| Appropriation Type | Army | Navy | Marine Corps | Air Force | OSD |
|--|---------|---|--------------|-----------|---------|
| Military Personnel | 21*2010 | 17*1453 | 17*1105 | 57*3500 | N/A |
| Reserve Personnel | 21*2070 | 17*1405 | 17*1108 | 57*3700 | N/A |
| National Guard Personnel | 21*2060 | N/A | N/A | 57*3850 | N/A |
| Operations & Maintenance | 21*2020 | 17*1804 | 17*1106 | 57*3400 | 97*0100 |
| Operations & Maintenance, Reserve | 21*2080 | 17*1806 | 17*1107 | 57*3740 | N/A |
| Operations & Maintenance, National Guard | 21*2065 | N/A | N/A | 57*3840 | N/A |
| Procurement, Aircraft | 21*2031 | 17*1506 | | 57*3010 | N/A |
| Procurement, Missiles | 21*2032 | 17*1507 (not separate – the combined appropriation is entitled Weapons Procurement) | 17*1109 | 57*3020 | N/A |
| Procurement, Weapons & Tracked Vehicles | 21*2033 | | | N/A | N/A |
| Procurement, Other | 21*2035 | | | 17*1810 | 57*3080 |
| Procurement, Ammunition | 21*2034 | 17*1508 | | 57*3011 | N/A |
| Shipbuilding & Conversion | N/A | 17*1611 | | N/A | N/A |
| Res., Develop., Test, & Eval.7 | 21*2040 | 17*1319 | | 57*3600 | 97*0400 |
| Military Construction | 21*2050 | 17*1205 | | 57*3300 | 97*0500 |
| Family Housing Construction | 21*0702 | 17*0703 | | 57*0704 | 97*0706 |
| Reserve Construction | 21*2086 | 17*1235 | | 57*3730 | N/A |
| National Guard Construction | 21*2085 | N/A | N/A | 57*3830 | N/A |

Table 2-1

* The asterisk in the third digit is replaced with the last number in the relevant fiscal year (i.e. Operations & Maintenance, Army funds for FY2004 would be depicted as 2142020).

** Source for the codes found in Table 2-1: DOD FMR, vol. 6B, App. A (Nov. 2001) (found at: <http://www.dod.mil/comptroller/fmr/06b/06BApxA.pdf>).

IV. LIMITATIONS ON THE USE OF APPROPRIATED FUNDS.

A. General Limitations on Authority.

1. The authority of executive agencies to spend appropriated funds is limited.
2. An agency may obligate and expend appropriations only for a proper **purpose**.
3. An agency may obligate only within the **time** limits applicable to the appropriation (*e.g.*, O&M funds are available for obligation for one fiscal year).
4. An agency must obligate funds within the **amounts** appropriated by Congress and formally distributed to or by the agency.

B. Limitations -- Purpose.

1. The "Purpose Statute" requires agencies to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. See 31 U.S.C. § 1301; see also DFAS-IN Reg. 37-1, ch. 8, para. 0803.
2. Three-Part Test for a Proper Purpose. Secretary of Interior, B-120676, 34 Comp. Gen. 195 (1954).
 - a. Expenditure of appropriations must be for a specified purpose, or **necessary and incident** to the proper execution of the general purpose of the appropriation;
 - b. The expenditure must not be prohibited by law; and
 - c. The expenditure must not be otherwise provided for, *i.e.*, it must not fall within the scope of another appropriation.

3. Appropriations Acts. DOD has nearly one hundred separate appropriations available to it for different purposes.
 - a. Appropriations are differentiated by service (Army, Navy, etc.) and component (Active, Reserve, etc.), as well as purpose (Procurement, Research and Development, etc.). The major DOD appropriations provided in the annual appropriations act are:
 - (1) Operation & Maintenance -- used for the day-to-day expenses of training exercises, deployments, operating and maintaining installations, etc.;
 - (2) Personnel -- used for military pay and allowances, permanent change of station travel, etc.;
 - (3) Research, Development, Test and Evaluation (RDT&E) -- used for expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance and operation of facilities and equipment; and
 - (4) Procurement -- used for production and modification of aircraft, missiles, weapons, tracked vehicles, ammunition, shipbuilding and conversion, and “other procurement.”
 - b. DOD also receives smaller appropriations for other specific purposes (*e.g.*, Overseas Humanitarian, Disaster, and Civic Aid (OHDACA), Chemical Agents and Munitions Destruction, etc.).
 - c. Congress appropriates funds separately for military construction.
4. Authorization Acts.
 - a. Annual authorization acts generally precede DOD’s appropriations acts.

- b. The authorization act may clarify the intended purposes of a specific appropriation or contain restrictions on the use of the appropriated funds.

C. Limitations -- Time.

- 1. Appropriations are available for limited periods. An agency must incur a legal obligation to pay money within an appropriation's period of availability. If an agency fails to obligate funds before they expire, they are no longer available for new obligations.
 - a. Expired funds retain their "fiscal year identity" for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations. Again, however, expired funds are not available for new obligations.
 - b. There are exceptions to this general prohibition against obligating funds for new work following the period of availability.
- 2. Appropriations are available only for the bona fide need of an appropriation's period of availability. 31 U.S.C. § 1502(a). See Magnavox -- Use of Contract Underrun Funds, B-207433, Sept. 16, 1983, 83-2 CPD ¶ 401; To the Secretary of the Army, B-115736, 33 Comp. Gen. 57 (1953).

D. Limitations -- Amount.

- 1. The Antideficiency Act, 31 U.S.C. §§ 1341-42, 1511-19, prohibits any government officer or employee from:
 - a. Making or authorizing an expenditure or obligation in excess of the amount available in an appropriation. 31 U.S.C. § 1341(a)(1)(A).
 - b. Making or authorizing expenditures or incurring obligations in excess of formal subdivisions of funds; or in excess of amounts permitted by regulations prescribed under 31 U.S.C. § 1514(a). See 31 U.S.C. § 1517(a)(2).

- c. Incurring an obligation in advance of an appropriation, unless authorized by law. 31 U.S.C. § 1341(a)(1)(B).
 - d. Accepting voluntary services, unless otherwise authorized by law. 31 U.S.C. § 1342.
- 2. Investigating violations. If an apparent violation is discovered, the agency must report and investigate. Violations could result in administrative and/or criminal sanctions. See DOD FMR, vol. 14 (March 2001); DFAS-IN Reg. 37-1, ch. 4, para. 040204; AFI 65-608, Antideficiency Act Violations (1 May 1998), ch. 3, para. 3.1, available at <http://www.e-publishing.af.mil/pubfiles/af/65/afi65-608/afi65-608.pdf>.
 - a. The commander must issue a flash report within 15 working days of discovery of the violation. Air Force commanders must submit flash reports within 10 working days.
 - b. The MACOM commander must appoint a “team of experts,” including members from the financial management and legal communities, to conduct a preliminary investigation.
 - c. If the preliminary report concludes a violation occurred, the MACOM commander will appoint an investigative team to determine the cause of the violation and the responsible parties. For the Army, investigations are conducted pursuant to AR 15-6, Procedure for Investigating Officers and Boards of Officers (30 Sep 1996).
 - d. The head of the agency (e.g., SECDEF, for the DOD) must report to the President and Congress whenever a violation of 31 U.S.C. §§ 1341(a), 1342, or 1517 is discovered. OMB Cir. A-11, sect. 145; DOD Directive 7200.1, Administrative Control of Appropriations (4 May 1995), Encl. 5, para. R [hereinafter DODD 7200.1].
- 3. Individuals responsible for Antideficiency Act violations shall receive disciplinary action commensurate with the circumstances and the severity of the violation. DODD 7200.1, para. D.5. See 31 U.S.C. §§ 1349(a), 1518.

V. FISCAL LAW RESEARCH MATERIALS.

A. Legislation.

1. Titles 10 and 31, United States Code.
2. Annual authorization and appropriations acts.

B. Legislative History.

1. Legislative history is the record of congressional deliberations that precede the passage of a statute. It is not legislation. See Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978).
2. The legislative history is not binding upon the Executive Branch. If Congress provides a lump sum appropriation without restricting what may be done with the funds, a clear inference is that it did not intend to impose legal restrictions. See SeaBeam Instruments, Inc., B-247853.2, July 20, 1992, 92-2 CPD ¶ 30; LTV Aerospace Corp., B-183851, Oct. 1, 1975, 75-2 CPD ¶ 203.

C. Decisions.

1. The Comptroller General issues opinions concerning the propriety of appropriated fund obligations or expenditures, except for those described in paragraph 3, below. See 31 U.S.C. § 3529. Activities must request these opinions through finance officer channels in advance of an obligation or expenditure. See DOD FMR, vol. 5, ch. 1 para. 010403.B.2 (May 2001).
2. The fiscal law decisions of the Comptroller General appear in the Decisions of the Comptroller General of the United States, published by the Government Printing Office. Comptroller General opinions also are available at the Government Accountability Office (GAO) website (<http://www.gao.gov>), through commercial legal research services (*e.g.*, LEXIS, WESTLAW), and in the Comptroller General Procurement Decisions (CPD) reporter.

3. Agency Advance Decisions. See DOD FMR, vol. 5, ch. 1, para. 010403.B.2 and vol. 5, app. E (May 2001). Per the General Accounting Office Act of 1996 (Pub. L. 104-316, § 204, 110 Stat. 3826 (1996) (codified at 31 U.S.C. § 3529)) and, as delegated by the Director, Office of Management and Budget (OMB), the following issue advance decisions for designated categories:
 - a. DOD: uniformed service member pay, allowances, travel, transportation, and survivor benefits.
 - b. Office of Personnel Management (OPM): civilian pay and leave.
 - c. General Services Administration Board of Contract Appeals (GSBCA): civilian employee travel, transportation, and relocation.

D. Regulations.

1. DOD: DOD 7000.14-R (DOD Financial Management Regulation - 15 Volumes), found at: <http://www.dod.mil/comptroller/fmr/>
2. Army:
 - a. DFAS-IN 37-1, Finance and Accounting Policy Implementation. found at: <https://dfas4dod.dfas.mil/centers/dfasin/library/ar37-1/index.htm>
 - b. DFAS Manual 37-100-XX, The Army Management Structure Fiscal Year 20XX (published annually and provides the accounting classification and structure codes), the FY 2004 version (DFAS Manual 37-100-04, The Army Management Structure Fiscal Year 2004) is found at: <https://dfas4dod.dfas.mil/centers/dfasin/library/3710004/>. If you are looking for a prior year, replace the final two digits above (“04”) with the last two digits of the fiscal year you are searching for.
 - c. To locate Army (and DOD) regulations dealing with a particular issue:

- (1) Go to the Consolidated Publications Webpage within JAGCNET, found at:
<https://www.jagcnet.army.mil/LaawsXXI/cds.nsf> (note: you will need to enter a user name and password for access to this site);
- (2) Scroll down the left-hand side of the webpage until you reach the link “Search,” then click on this link;
- (3) This search function will allow you to look for keywords within all publications found in JAGCNET. You can also perform electronic searches at the U.S. Army Publishing Agency’s electronic publications webpage, found at <http://www.usapa.army.mil/>, but the search function at that site only searches the titles of the regulation not the actual text within the regulation.

3. Air Force:

- a. AFI 65-601, vol. 1, Budget Guidance and Procedures (17 Nov. 2000), found at: <http://www.e-publishing.af.mil/pubfiles/af/65/afi65-601v1/afi65-601v1.pdf>;
- b. AFI 65-608, Antideficiency Act Violations (1 May 1998), found at: <http://www.e-publishing.af.mil/pubfiles/af/65/afi65-608/afi65-608.pdf>;
- c. DFAS-DE Interim Guidance on Procedures for Administrative Control of Appropriations and Funds Made Available to the Air Force (formerly DFAS-DE 7200.1-R and AFR 177-16), found at: <https://dfas4dod.dfas.mil/library/pubs/7000.4-R.pdf>;
- d. DFAS-DE Interim Guidance on Accounting for Obligations (formerly DFAS-DE 7000.4-R and AFR 170-8), found at: <https://dfas4dod.dfas.mil/library/pubs/7000.4-R.pdf>;
- e. DFAS-DE Interim Guidance on Accounting for Commitments (formerly DFAS-DE 7000.5-R and AFR 170-13), found at: <https://dfas4dod.dfas.mil/library/pubs/7000.5-R.pdf>;

- f. DFAS-DE 7010.1-R General Accounting and Finance Systems at Base Level (15 Feb. 1991), found at:
<https://dfas4dod.dfas.mil/library/pubs/70101R/7010frnt.htm>;
- g. DFAS-DE 7010.2-R Commercial Transactions at Base Level (31 Jan. 1996); found at:
<https://dfas4dod.dfas.mil/library/pubs/70102R/70102frt.htm>;
- h. DFAS-DE Interim Guidance on Procedures for Travel Accounting Operations (formerly DFAS-DE 7010.3-R), found at:
<https://dfas4dod.dfas.mil/library/pubs/70103R/7010-3-R.pdf>.

E. Government Accountability Office Treatises.

- 1. The Government Accountability Office has published a four-volume treatise entitled Principles of Federal Appropriations Law (commonly referred to as the “Red Book”). The individual volumes are as follows:
 - a. Volume 1, 2d ed., GAO/OGC 91-5 (July 1991), found at:
<http://www.gao.gov/special.pubs/og91005.pdf>;
 - b. Volume 2, 2d ed., GAO/OGC 92-13 (Dec. 1992), found at:
<http://www.gao.gov/special.pubs/og92013.pdf>;
 - c. Volume 3, 2d ed., GAO/OGC 94-33 (Nov. 1994), found at:
<http://www.gao.gov/special.pubs/og94033.pdf>;
 - d. Volume 4, 2d ed., GAO-01-179SP (Mar. 2001), found at:
<http://www.gao.gov/special.pubs/PFALVolumeIV.pdf>.
- 2. General Accounting Office, Accounting Guide, GAO/AFMD--PPM-2.1 (September 1990); Policies and Procedures Manual For Guidance of Federal Agencies, Title 7 (February 1990).
- 3. General Accounting Office, A Glossary of Terms Used in the Budget Process, GAO/AFMD-2.1.1 (July 1993), found at:
<http://161.203.16.4/t2pbat6/148403.pdf>.

F. Internet Services.

1. Defense Finance and Accounting Service (<http://dfas4dod.dfas.mil>).
2. Miscellaneous Agency Home Pages, *e.g.*, The Assistant Secretary of the Army for Financial Management and Comptroller (<http://www.asafm.army.mil/>).

VI. CONTINUING EDUCATION FOR CONTRACT AND FISCAL LAW PROFESSIONALS

A. Basic Courses.

1. Contract Attorneys Course (CAC). Two weeks of basic instruction for attorneys new to the practice of contract law; offered once per year in late July to early August. (If you have substantial contract law experience and take this as a refresher, please keep the purpose of this course in mind.)
2. Operational Contracting. A one-week “mini-CAC” emphasizing contract issues likely to be faced by deployed contract attorneys. (Not suitable for attorneys who have recently taken the CAC or have contract law experience.)
3. Fiscal Law / Comptroller Accreditation Course.
 - a. Instruction on the statutory and regulatory limitations governing the obligation and expenditure of appropriated funds, and an insight into current fiscal law issues within DOD and other federal agencies.
 - b. Offered numerous times a year -- three times at TJAGLCS, up to 150 students; once by satellite from the Air Force Judge Advocate General’s School, Maxwell AFB, AL, 1500-2000 students; 3-5 times at various locations throughout the world; 3.5-4.5 days.

B. Advanced Courses.

1. Advanced Contract Law Course. Next Course, March 06.

- a. Covers specialized acquisition topics. Intended for attorneys with more than one year of contract law experience. The course addresses a wide variety of topics, possibly including: a survey of recent developments in the field of procurement law; competition; competitive sourcing; commercial item acquisitions; contract litigation; environmental contracting; costs and cost accounting standards; deployment contracting; and fiscal law.
- b. Offered in alternate years opposite the Contract Litigation Course; up to 150 students per course; 4 ½ days.

2. Contract Litigation Course. Next Course, March 07.

- a. Instruction on various aspects of federal litigation before the Government Accountability Office, federal courts, and the boards of contract appeals. Scope of instruction includes the analysis of claims, bid protests, contract disputes, and litigation techniques.
- b. Offered in alternate years with the Advanced Contract Law Course; up to 150 students per course; 4 ½ days.

3. Procurement Fraud Course.

- a. Instruction on criminal, civil, administrative, and contractual remedies used to combat procurement fraud.
- b. Offered every other year (next course June 2006); up to 150 students per course; 2 ½ days.